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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 JAMES LYNN HINES,
12 CDCR #K-86989,
13 ADC #197067,

Plaintiff,

14 vs.

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16 ORTIZ, Captain;
ERIC S. PIERSÖN, Correctional Officer,

17 Defendants.

18 Civil No. 08-0681 BTM (BLM)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY FILING FEE
REQUIRED BY 28 U.S.C. § 1914(a)
AND/OR FAILING TO MOVE TO
PROCEED IN FORMA PAUPERIS
PURSUANT TO 28 U.S.C. § 1915(a)**

19 Plaintiff, an inmate currently incarcerated at the Arizona State Prison Complex in
20 Florence, Arizona, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C.
21 § 1983, *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388
22 (1971), and other federal statutes.¹

23 **I.**

24 **Failure to Pay Filing Fee or Request IFP Status**

25 All parties instituting any civil action, suit or proceeding in a district court of the United
26 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. See 28

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28 ¹ The Court notes that Plaintiff was formerly a California state inmate. It is unclear whether he
is currently a California state inmate housed temporarily in Arizona, or whether he is now serving an
Arizona prison sentence.

¹ U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay this filing fee only if
² the party is granted leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a).
³ See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d
⁴ 1176, 1177 (9th Cir. 1999).

5 Here, Plaintiff has neither prepaid the \$350 filing fee required to commence a civil action,
6 nor has submitted a Motion to Proceed IFP. Therefore, this case is subject to immediate
7 dismissal pursuant to 28 U.S.C. § 1914(a).

II.

Conclusion and Order

10 || For the reasons set forth above, the Court hereby:

11 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
12 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

13 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is "Filed"
14 to: (a) prepay the entire \$350 civil filing fee in full; **or** (b) complete and file a Motion to proceed
15 IFP which includes a certified copy of his trust account statement for the 6-month period
16 preceding the filing of his Complaint pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR
17 3.2(b).

18 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with the
19 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
20 *Pauperis.*" If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
21 attached Motion to Proceed IFP within that time, this action shall remain dismissed without
22 prejudice and without further Order of the Court.

24 | DATED: April 16, 2008

Barry Ted Moskowitz
Honorable Barry Ted Moskowitz
United States District Judge